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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9 BRIAN DEDIEMAR

No. C07-02982 VRW

10
11 Plaintiff,
12 vs.

PLAINTIFF'S CASE
MANAGEMENT STATEMENT

13 THE CHARLES SCHWAB LONG
TERM DISABILITY PLAN,

14 Defendant
15 _____/

16 UNUM LIFE INSURANCE COMPANY
OF AMERICA,

17 Real Party In Interest
18 _____/

19 Counsel apologizes to the Court for filing a separate statement. Defense counsel had
20 prepared a draft joint statement which counsel undersigned reviewed and suggested some changes.
21 Unfortunately, these apparently were lost in cyberspace as defense counsel did not receive them, and
22 as a result of the confusion, the parties ended up with separate statements.
23

24 We join in defendant's statement with the exception of the standard of review, which
25 should be *de novo*, because of the failure of defendant to reassess the claim.
26

27 During the reassessment process, in August, 2006, having heard nothing for over a
28 year from defendant, Mr. Dediemar submitted a lengthy report from Dr. Sheila Bastien and

1 supporting material, which defendant now admits it received. At the time defendant did nothing to
2 acknowledge receipt of this information. In October, 2006, Mr. Dediemar received some forms
3 which defendant requested be completed and returned to within 60 days. Counsel mailed the
4 completed forms back to Defendant on October 25, 2006, but Defendant denies receiving them.¹
5 Because Defendant did not respond following the transmittal of those forms, counsel re-sent them in
6 March, 2007 with a request that Defendant confirm receipt. Defendant admits receiving the forms in
7 March, but refused to proceed with reassessment of the case claiming that the 60 day “deadline” had
8 not been met.

9
10 Mr. Dediemar contends (1) that the forms were sent and (2) that the notice-prejudice
11 rule applies in any event, so that even if the forms had only been returned in March, the claim still
12 should have been reassessed:

13 Finally, we reject UNUM's suggestion that the notice-prejudice rule
14 conflicts with § 503 of ERISA, 29 U.S.C. § 1133, which requires plans
15 to provide notice and the opportunity for review of denied claims, or
16 with Department of Labor regulations providing that “[a] claim is filed
17 when the requirements of a reasonable claim filing procedure ... have
18 been met,” 29 CFR § 2560.503-1(d) (1998). By allowing a longer
19 period to file than the *minimum* filing terms mandated by federal law,
20 the notice-prejudice rule complements rather than contradicts ERISA
21 and the regulations.

22 *Unum Life Insurance Co. of America v. Ward* (1999) 526 U. S. 358,
23 377.

24 Because defendant failed to proceed with reassessment, the Court should decide the
25 case using *de novo review*, instead of discretionary review.

26
27 October 23, 2007

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Laurence F. Padway
Attorney for plaintiff

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¹Unum reports that only one in four claimants who filed for reassessment responded to this
update request, and it denied three out of four claims for alleged failure to return these forms.